

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE August 14, 2001

TO : Celeste J. Mattina, Regional Director
Karen P. Fernbach, Regional Attorney
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Region 2

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: St. John Knits 512-0125-1500
Case 2-CA-33522-1 512-0125-7500
512-0125-8700

This Section 8(a)(1) case was submitted for advice as to whether the Employer lawfully discharged a supervisor who was directed to tell her fiancé, a Union employee who was organizing the Employer's employees, that the supervisor's job was in jeopardy unless the fiancé stopped his organizing activities.

FACTS

Briefly, in around December 2000, Union business agent Abutel began organizing the Employer's New York retail store employees. Abutel's fiancé, Allocca, was a supervisor at the store, holding the position of assistant store manager. In a December conference call between the store management and corporate officials, a corporate official told the New York manager and Allocca they should not discuss the Union campaign with employees. Allocca subsequently told Abutel of the conference call. Abutel responded that Allocca would not be involved because she was assistant manager.

At a January 10, 2001,¹ meeting between corporate officials and store managers, a corporate official said that he had found out that Allocca had a relationship with Abutel, and asked Allocca why she hadn't told them. Allocca said that the Employer had told her not to discuss the Union with anyone, and that Abutel had told her the Union didn't affect her. The corporate official said that that wasn't so and that he was upset with Allocca. Corporate officials announced the appointment of a new manager for the store. The new manager said that she would like to keep Allocca on; another corporate official, Woodrow, said she would like to promote Allocca within the

¹ All subsequent dates are in 2001.

next six months, and asked Allocca if she was interested and if she could relocate.

On January 11, Allocca filed the original charge against the Employer in this case, alleging threats against and unlawful discharges of employees. Also on January 11, two corporate officials and the new store manager told an employee that Allocca would remain as assistant manager.

On January 12, two corporate officials, Pressler and Woodrow, met with Allocca. Pressler said that Allocca should speak with Abutel and talk him out of organizing and, that if she didn't, her job was on the line. Allocca responded that Abutel would say the situation had nothing to do with her and that he would be right, and that she wanted no part of the matter. Woodrow said that Allocca should speak to Abutel; Allocca said she would do what she could but could give no guarantees. That evening, Allocca told Abutel what had happened; he refused to discuss the matter, said it had nothing to do with her, and that she should tell Pressler to call him if there were questions.

At a store staff meeting the next morning, January 13, the new manager told employees that Allocca would be part of her new management team. That afternoon, Pressler and Woodrow asked Allocca if she had spoken with Abutel; Allocca related her conversation with Abutel, also stating that Abutel was upset that Allocca's job had been threatened. Pressler said okay. At 6:15 that evening, Woodrow and the new store manager met with Allocca. Woodrow said that she had no choice but to terminate her. Allocca asked if the new manager didn't want to work with her; Woodrow said that wasn't the reason, but said the reason was Allocca's behavior. When Allocca asked what that meant, Woodrow said she wouldn't discuss it.

An employee states that at a staff meeting the following day, Woodrow told the employees that Allocca would no longer be assistant manager because of "differences." The same employee states that other employees told her they were present when Allocca was fired, and that Allocca told those employees she was fired because she would not get her spouse to stop organizing. On March 19, Allocca filed an amended charge in this case, alleging she was terminated in violation of Section 8(a)(1) because she would not tell a Union representative to whom she was engaged to cease his organizing activities.²

² There is an undocketed charge in the file, signed by Allocca on January 14, alleging that she "was now fired for making a complaint to the NLRB last week against the

The Employer has submitted statements that, as early as November 2000, it was aware that Abutel and Allocca had a relationship. Woodrow states that Allocca was asked during the December conference call whether she had any knowledge of the Union campaign, which she denied. Woodrow further states that she told Allocca during the January 10 meeting that the Employer knew of Abutel's connection to the campaign and of Allocca's relationship with Abutel. She states that when Allocca was asked whether she had any knowledge of the Union activities, Allocca "incredibly" denied knowing anything.³ The Employer denies that Allocca was instructed to ask Abutel to cease his organizing activities. The Employer states that on January 13 it gained knowledge from several employees that Allocca was frequently present during "Union organizing activities." Thus, Allocca was allegedly terminated for her "false statement in response to a direct question" and "her failure to report to the Company her obvious knowledge of that campaign."

ACTION

We agree that the Employer unlawfully discharged supervisor Allocca in order to interfere with the Section 7 activities of the Employer's employees by coercing the Union agent who was organizing them.

While the circumstances in which the discharge of a supervisor violates Section 8(a)(1) are limited,⁴ retaliatory discharge of a supervisor in an effort to coerce a related employee is violative.⁵ The Board has not

Company for firing employees who supported Union organization."

³ As noted above, Allocca states that at this January 10 meeting she said that she had spoken with Abutel about the Union organizing campaign after the December conference call.

⁴ Parker-Robb Chevrolet, 262 NLRB 402 (1982), rev. denied 711 F.2d 383 (D.C. Cir. 1983). The Region has concluded that there is no evidence that the Employer knew of Allocca's January 11 charge when it discharged Allocca on January 13. If there were such evidence, Allocca's discharge would be presumably unlawful under Parker-Robb's holding that discharging a supervisor for testifying at a Board proceeding violates Section 8(a)(1).

limited this theory to threats against parties to formal marital or blood relationships.⁶ The Board has also found threats to or coercion of union agents to violate Section 8(a)(1), even when no employees are aware of the conduct, because the conduct directly interferes with employee Section 7 rights. For example, in Lane Drug Stores⁷ the Board found unlawful an offer by an employer to a union representative to reimburse the union for its organizing expenses if the union withdrew its election objections and ULP charges.⁸

We conclude that the Employer's discharge of Allocca, following the threat conveyed through her to Abutel, violated Section 8(a)(1), as it was expressly intended to induce the Union to abandon efforts to organize and represent the employees. By its terms the threat that Allocca's job was on the line if she didn't talk Abutel out of organizing the employees shows that Allocca's discharge was "motivated by a desire to thwart organizational activity among employees;"⁹ the desired interference with employee rights would not be merely incidental. There is also some evidence that employees knew of the reason for Allocca's discharge, making the conduct more coercive.

⁵ Advertiser's Mfg. Co., 280 NLRB 1185 (1986), enfd. 823 F.2d 1086 (7th Cir. 1987); Kenrich Petrochemicals, 294 NLRB 519, 531-33 (1989), enfd. in rel. part 893 F.2d 1468 (3d Cir. 1990), enfd. on rehearing 907 F.2d 400 (3d Cir. 1990), cert. denied 498 U.S. 981 (1990).

⁶ See Marshall Durbin Poultry, 310 NLRB 68, 99 (1993), enfd. in rel. part 39 F.3d 1312 (5th Cir. 1994) (threat to discharge supervisor who lived with an employee, for violating alleged anti-fraternization policy, unlawful because it was calculated to interfere with employee's anticipated testimony at ULP hearing). Cf. Yukon Manufacturing, 310 NLRB 324, 336 (1993) (layoff of fiancé of charging party; both were statutory employees).

⁷ 88 NLRB 584, 586-87 (1950).

⁸ See also Niskayuna Consumers Cooperative, 155 NLRB 170, 180 (1965), enfd. 376 F.2d 260 (2d Cir. 1966) (employer unlawfully threatened that union agent's associate would go to jail unless union either withdrew ULP charges or agreed to a Board election).

⁹ Parker-Robb, 262 NLRB at 404.

We also conclude that the fact that Allocca and Abutel were only engaged and, apparently, living together, rather than being relatives, should not privilege the Employer to discharge a supervisor when that discharge is used coercively to directly interfere with employees' organizational activity. Thus, coercion was found in Lane Drug and Niskayuna Cooperative even though the threats were not to the union representatives' personal interests or those of relatives. We further note that the Board has not limited the Advertiser's Manufacturing exception to the general Parker-Robb rule to attempts to coerce relatives of statutory employees. Finally, Abutel's status as a union organizer does not damage our conclusion. Lane Drug indicates that the rights of statutory employees can be coerced through threats to union representatives.

The Employer denies that it threatened Abutel through Allocca or that Allocca's lack of success in convincing Abutel led to her discharge. Rather, the Employer argues that it discharged Allocca because she allegedly lied about knowing of Union activity as late as January 10, and that the Employer had no direct evidence of her knowledge until employees spoke to an Employer representative on January 13. While an employer may discharge a supervisor who fails to lawfully prevent a workforce from organizing,¹⁰ the evidence belies the Employer's contentions. The sequence of events shows that the Employer was willing to retain Allocca even after it knew of her "lies" about her knowledge of Union activity. Thus, Allocca says that at the January 10 meeting, she told the Employer of her conversation about the Union with Abutel after the December conference call. Notwithstanding this information, as Employer officials told employees on January 11 and 12, it decided Allocca would remain as assistant store manager. Only after the Employer instructed Allocca on January 12 to threaten Abutel, with her job on the line and she reported her lack of success was she discharged. Thus, the Employer was willing to retain Allocca despite her "lies" about her knowledge of Union activity, but was not willing to do so when she was unsuccessful in coercing Abutel to cease organizing.

B.J.K.

¹⁰ See, e.g., World Evangelism, Inc., 261 NLRB 609 (1982).